# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10817-2011

**BETWEEN:**

SOLICITORS REGULATION AUTHORITY Applicant

and

MARK KENNETH GEORGE BENNETT Respondent

---

Before:

Mr A. N. Spooner (in the chair)
Mr J. Astle
Mr M. C. Baughan

Date of Hearing: 20th March 2012

---

**Appearances**

Daniel Purcell, solicitor of Capsticks Solicitors LLP, 1 St George's Road, London, SW19 4DR for the Applicant.

Stephen Fox, solicitor of Ralli Solicitors, West Riverside, Manchester M3 5FT for the Respondent.

---

# JUDGMENT

---

**Allegations**

1. The allegations against the Respondent were that, while a partner in Douglas Clift and Co ("the firm"):

1.1 he failed to act with integrity in breach of Rule 1.02 of the Solicitors Code of Conduct ("SCC") and Rule 1(a) of the Solicitors Practice Rules ("SPR") 1990;

1.2 he failed to act in the best interests of clients in breach of Rule 1.04 of the Solicitors Code of Conduct and Rule 1(c) of the Solicitors Practice Rules 1990;

1.3 he failed to provide a good standard of service in breach of Rule 1.05 of the Solicitors Code of Conduct and Rule 1(e) of the Solicitors Practice Rules 1990;

1.4 he acted in a way which was likely to diminish the trust the public places in solicitors in breach of Rule 1.06 of the Solicitors Code of Conduct and the good repute of the solicitors' profession in breach of Rule 1(d) of the Solicitors Practice Rules 1990;

1.5 he failed to keep accounting records properly written up in respect of office money relating to client matters in breach of Rule 32 (1) of the Solicitors Accounts Rules 1998;

1.6 he failed to provide for financial control of budgets, expenditure and cash flow in breach of Rule 5.01 of the Solicitors Code of Conduct;

1.7 he failed to enter into Conditional Fee Agreements ("CFA") in accordance with the Conditional Fee Agreements Regulations 2000;

1.8 his conduct was dishonest, in the respects particularised in the allegations herein in that:

1.8 .1 statements made to clients by the Respondent or on the Respondent's instruction were made to the effect that, or giving the impression that court proceedings had been issued when this was not the case; and

1.8 .2 statements made to clients by the Respondent or on the Respondent's instruction were made to the effect that settlement payments had been offered to or received by the Respondent's firm, on the clients' behalf when this was not the case.

**Documents**

2. The Tribunal reviewed all of the documents submitted on behalf of the Applicant and the Respondent, which included:

Applicant

- Application dated 5 September 2011;
- Rule 5 Statement and exhibit bundle "DWRP1" dated 2 September 2011;
- Statement of Costs dated 12 March 2012.

Respondent

- Medico-Legal Psychological Report of Dr Michael B Schauder dated 29 December 2011;
- Testimonials;
- Schedule of Income and Outgoings.

**Factual Background**

3. The Respondent was admitted as a solicitor on 2 January 1990 and since 1995 had been a partner in the firm. Since 2002 the firm had been a three partner firm practising at 25 Church Street, Lancaster. The Respondent's practice was primarily claimant personal injury work. Although the firm had two small scale referral arrangements, the bulk of the Respondent's work was undertaken as a result of "word of mouth".

4. In April 2010 the Applicant received notification from the firm of concerns regarding payments made from the firm's office account to clients by the Respondent or at the Respondent's instigation. Immediately after the firm's concerns were identified, the Respondent was excluded from the firm's premises and the partnership was later dissolved. The firm provided additional information concerning the findings of a review of the Respondent's client files.

5. The total value of payments identified by the firm as having been made by the Respondent from the firm's office account to clients, where corollary incoming payments had not been received, was in excess of £100,000.

6. The resulting shortfall in the firm's funds had been partially rectified by the Respondent in that he agreed to the retention by the firm of capital invested by him in the firm and by payment of £10,000 by the Respondent to the firm shortly after he left the firm. The Respondent had also agreed to pay the firm an additional £10,000.

7. Of the payments identified by the firm, the payments made in the matters identified in the Schedules exhibited to the Rule 5 Statement caused the firm to believe that clients may have been misled as to the outcome of matters on which the Respondent had been instructed.

8. One of the two remaining partners at the firm, Mr G provided the Applicant with a Statement which:

    - explained the Respondent's employment history with the firm;
    - explained the firm's payment request system at the material times;
    - confirmed how the payments giving rise to these proceedings were requested and made;
    - confirmed the payments were made from the firm's office account in circumstances where the firm had not recovered payments;
    - identified those payments by date, recipient and value;

- produced documents taken from client files, including documents recording the progress made and communication with clients;

- produced printouts from the firm's ledgers; and

- explained how the unauthorised payments were detected and the steps subsequently taken by the firm.

9. Mr G's Statement exhibited extracts from a note prepared by the Respondent following his departure from the firm in which he had set out some information, and made some admissions, about his conduct of cases and the payments made to clients.

Payments for sums not received by the firm

10. Seven matters were identified in respect of which payments were made to clients between October 2005 and April 2010 from the firm's office account, in the total sum of £33,969.65 where payments had not been, or were not subsequently, received by the firm. In the majority of cases the ledgers recorded payments using words to the effect that the payment was "on account of damages". On the matter of Mr IB, the Respondent arranged a payment of £9,500 on 12 May 2008 from the firm's office account. The ledgers recorded that there was no corollary receipt of funds into the firm's office or client account in respect of that matter.

11. The firm's review of its bank statements confirmed that each of the payments recorded on the ledgers had actually been made from the firm's bank account and the ledgers were an accurate record of the sums which had been paid from the firm's office account.

12. The partners in the firm were not aware that payments were being made to clients from the firm's funds or at the instigation of the Respondent on matters being conducted by the Respondent and in circumstances where such payments would not be recovered by the firm. The partners in the firm were not informed by the Respondent that such payments had been made until the matters were detected.

Misleading clients

13. There was evidence that clients were misled as to the progress which had been made in matters on which the Respondent was instructed.

Client: Mr IB

14. The matter related to a personal injury claim on behalf of the client. The firm's ledger for this client showed that a payment for £9,500 was made to the client from the firm's office account on 12 May 2008. The ledger entry described the payment as "Damages due to client on account".

15. The claim related to an alleged injury which occurred in June 2000. A letter from the potential defendant dated 31 October 2001 had been received by the Respondent and

repudiated liability. There was no evidence that this had been communicated to the client. In June 2003 and close to the end of the limitation period, it appeared that proceedings were issued but the letter from the Respondent to the court requested that the proceedings were not served.

16. There was no evidence on the file of any further correspondence with the proposed defendant or that any further steps were taken to serve or advance the claim. The file included correspondence from the Respondent to the client which indicated that proceedings were making progress, in particular a letter from the Respondent to the client dated 3 October 2003 which referred to a need to "serve further court papers" notwithstanding that no previous court papers appeared to have been served and a further email to the client dated 11 May 2005 which referred to "awaiting a hearing date".

17. An email was sent to the client dated 15 January 2008, at the Respondent's instigation, which communicated an "offer" of which no evidence appeared on the file and in respect of which no payment was received. The offer was purportedly made on the same day as a telephone attendance note was taken of a call from the client expressing dissatisfaction at the delay in progress of their matter.

Client: Ms S

18. The ledger held by the firm for this client matter which related to a personal injury claim on behalf of the client showed that payments were made to the client from the firm's office account of £1,500 on 20 December 2007, £500 on 2 January 2008 and £7,750 on 13 June 2008. The ledger entries described the payments as "Payment on Account of Damages".

19. The claim related to an alleged injury which occurred in May 2001. A letter from the proposed defendant dated 1 October 2002 had been received by the Respondent and repudiated liability. There was no evidence that this had been communicated to the client.

20. There was no evidence on the file that action was taken prior to the expiry of the three year limitation period, there was no further correspondence with the defendant and no evidence that any further steps were taken to serve or advance the claim. In 2005 correspondence was sent to the client by the Respondent which referred to the enclosure of a draft statement concerning the circumstances of the client's accident and that the issue of her injury would be addressed in a further statement at a later stage assuming the case was successful on establishing fault against the defendant.

Client: C (a child)

21. Documents for this matter were held on a paper file and on a computer used by the Respondent. The ledger held by the firm for this client's matter, which related to a personal injury claim showed that a payment was made from the firm's office account to the client of £3,718.75 on 15 April 2010. The ledger described the payment as "Damages due to client".

22. The claim related to an alleged injury which occurred on 21 May 2002 to a child then aged thirteen who suffered an injury on a theme park ride during a school trip. A letter was sent by the Respondent to the client (GC on behalf of the child) on 21 October 2002 which stated:

> "So far as the question of legal costs are concerned, in a successful [sic] it will be recovered from the paying party and will be paid separately from the damages which your son will receive in full. In an unsuccessful claim the matter will cost you nothing which is known as a "No Win No Fee" arrangement."

23. There was no written CFA on the file and no indication in the correspondence on the file that such a document was created.

24. Letters were sent by the Respondent to two potential defendants in October 2002. The claim was rebutted by one of the potential defendants in a letter dated 12 February 2003 while the second potential defendant refused to comment on the issue of liability until it had had sight of the claimant's medical records which it appeared from the correspondence it had never received. There was no evidence that this position had been communicated to the client. There was no evidence on the firm's files that proceedings were issued although a draft unissued Claim Form appeared in the file.

25. There was no evidence on the file of any further correspondence with the proposed defendants or that any further steps were taken to serve or advance the claim. The client had been sent correspondence by the Respondent, which indicated that proceedings were making progress, including after the expiry of limitation. There was extensive e-mail correspondence during 2009 and 2010, well after the expiry of the limitation period, which gave detailed information about reported settlement discussions. The correspondence included the reporting of discussions concerning contributory negligence, advice on the merits of reported settlement offers and advice on the likely timescale for offers and payments. There was no evidence that such discussions took place and evidence that they did not in the form of the rebuttals of the claims in 2003.

26. There was evidence that the Respondent sought and obtained instructions on acceptance of a settlement offer and that the Respondent was instructed on the client's behalf to accept an offer which he had reported. There was evidence that the Respondent advised the client on possible means by which to seek to recover the "agreed" settlement figure, including the possibility of using bailiffs to enforce payment.

27. There were five other exemplified client matters which followed a similar pattern; eight in total.

<u>Inaccurate Recording of Payments</u>

28. A ledger for a file in the name of client Mr D showed a debit balance on the office ledger of £40,100 and recorded a number of comparatively large payments:

- 23 November 2004, cheque payment from the firm's office account for £10,000 which was described in the narrative section as "IW – Accountants Fee";

- 21 September 2005, cheque payment from the firm's office account for £10,250 which was described in the narrative section as "KB – Payment Due";

- 13 April 2006, cheque payment from the firm's office account for £7750 which was described in the narrative section as "PS – Consultants Fee";

- 9 February 2007, cheque payment from the firm's office account for £1900 which was described in the narrative section as "DB – Consultants Fee";

- 16 November 2007, BACS payment from the firm's office account for £2500 which was described in the narrative as "Mr JRL – Medical Report";

- 4 August 2008, cheque payment from the firm's office account for £5000 which was described in the narrative section as "JP – Payment Due".

29. A review of the Mr D file by Mr G revealed no indication that the payments described on the ledger were in any way related to the matter upon which the Respondent had been instructed by Mr D. Files were held by the firm on behalf of clients with the names used in the descriptions of the payments referred to. The Respondent recorded payments against the Mr D file which were not related to that file.

**Witnesses**

30. None.

**Findings of Fact and Law**

31. **Allegation 1.1: he failed to act with integrity in breach of Rule 1.02 of the Solicitors Code of Conduct ("SCC") and Rule 1(a) of the Solicitors Practice Rules ("SPR") 1990;**

**Allegation 1.2: he failed to act in the best interests of clients in breach of Rule 1.04 of the Solicitors Code of Conduct and Rule 1(c) of the Solicitors Practice Rules 1990;**

**Allegation 1.3: he failed to provide a good standard of service in breach of Rule 1.05 of the Solicitors Code of Conduct and Rule 1(e) of the Solicitors Practice Rules 1990;**

**Allegation 1.4: he acted in a way which was likely to diminish the trust the public places in solicitors in breach of Rule 1.06 of the Solicitors Code of Conduct and the good repute of the solicitors profession in breach of Rule 1(d) of the Solicitors Practice Rules 1990;**

**Allegation 1.5: he failed to keep accounting records properly written up in respect of office money relating to client matters in breach of Rule 32 (1) of the Solicitors Accounts Rules 1998;**

**Allegation1.6: he failed to provide for financial control of budgets, expenditure and cash flow in breach of Rule 5.01 of the Solicitors Code of Conduct;**

**Allegation 1.7: he failed to enter into Conditional Fee Agreements ("CFA") in accordance with the Conditional Fee Agreements Regulations 2000;**

**Allegation1.8: his conduct was dishonest, in the respects particularised in the allegations herein in that:**

**1.8 .1 statements made to clients by the Respondent or on the Respondent's instruction were made to the effect that, or giving the impression that court proceedings had been issued when this was not the case; and**

**1.8 .2 statements made to clients by the Respondent or on the Respondent instruction were made to the effect that settlement payments had been offered to or received by the Respondent's firm, on the clients' behalf when this was not the case.**

Submissions on behalf of the Applicant

31.1 Mr Purcell referred the Tribunal to the Rule 5 Statement and the exhibit bundle upon which he relied. He said that the Respondent had admitted all of the allegations, including the dishonesty allegation.

31.2 Mr Fox informed the Tribunal that the Respondent did not dispute the allegations and in response to a question from the Tribunal, he confirmed that not disputing the allegations was tantamount to admitting the allegations. He also confirmed that the Respondent admitted the allegation of dishonesty as it was put, namely that the Respondent had not told the truth to clients regarding their cases, progress of said cases and the issue of proceedings.

31.3 In relation to dishonesty, Mr Purcell referred the Tribunal to the Rule 5 Statement which particularised the allegation of dishonesty at allegation 1.8, namely that statements made to clients by the Respondent or on the Respondent's instruction had been to the effect that, or had given the impression that court proceedings had been issued when they had not, Secondly, that statements made to clients by the Respondent or on his instruction had been to the effect that settlement payments had been offered to or received by the firm on the clients' behalf, when that was not the case.

31.4 Mr Purcell summarised the allegations against the Respondent, namely:

- That he had made or caused to be made payments from the office account of the firm to clients IB, CC, KS, KW, GC and SA when such payments purported to be, but were not, received by the firm or due to be received by the firm (allegations 1.5 and 1.6);

- Misled clients IB, CC, KW, GC and SA in that he had falsely represented to such clients that sums had been received by the firm on their behalf when such sums had not in fact been received by the firm (allegations 1.1, 1.2, 1.3, 1.4 and 1.8);

- Misled clients KW, CH and IB in that he had falsely represented to such clients that court proceedings had been issued and served on their behalf when such proceedings had not in fact been issued and/or had not been served (allegations 1.1, 1.2, 1.3, 1.4 and 1.8);

- Misled clients IB, CC, KW, GC, AL, CH and SA in that he had falsely represented to such clients that matters in respect of which they had instructed him were being progressed when this was not in fact the case (allegations 1.1, 1.2, 1.3, 1.4 and 1.8);

- Failed to act in the best interests of clients or to provide a good standard of service (allegations 1.2 and 1.3) in that in respect of clients IB, CC, KS and GC, he had failed to take adequate steps to advance claims on their behalf within the relevant limitation periods;

- In relation to clients GC and AL, he had failed to enter into CFAs with clients in accordance with the CFA Regulations, having informed them that he was undertaking matters on a "no win no fee" basis (allegations 1.2, 1.3 and 1.7); and

- He had failed to advise clients of their potential liability for inter partes costs in the event that they were unsuccessful (allegations 1.2, 1.3 and 1.7);

- He had recorded payments to clients from the firm's office account relating to specific matters against the ledgers of other matters to which the payments did not relate (allegation 1.5).

31.5. Mr Purcell referred the Tribunal to the eight exemplified client matters in the Rule 5 Statement and said that he intended to exemplify two of these, namely Ms CC and Mr IB.

<u>Client: Ms CC</u>

31.6 Mr Purcell referred the Tribunal to the Respondent's letter dated 10 March 2005 to the client which stated:

> " ... We are hoping to settle your claim in early August and the next step is to issue Court proceedings".

The Respondent's next letter dated 3 March 2006 stated:

> "... I am trying to move the matter forward...

> I can assure you that I am anxious to bring this matter to a conclusion for you and will do my utmost to ensure that this is done sooner rather than later".

31.7 Mr Purcell then referred the Tribunal to Ms CC's letter dated 22 November 2006 to the Respondent which stated:

> "Further to my letter of 7 March last I have once more heard nothing further from you.
>
> Therefore I am writing to ask:
>
> 1. Is there a statute of limitations in relation to this case?...".

31.8 Mr Purcell said that the Respondent replied by letter dated 27 November 2006 which stated:

> "... In relation to the matters you have raised, there is a limitation period of notifying a claim, which is three years from the date of the accident. However, you have done that and we have pursued the matter on your behalf so it is not an issue so far as your position is concerned".

31.9 Mr Purcell said that by email dated 19 February 2008, Ms CC had requested that the Respondent "...request a further interim payment from the Council and [I] would ask you to do that as soon as possible". Mr Purcell referred the Tribunal to a ledger in the name of the client which showed two entries dated 7 August 2007 and 21 April 2008 respectively, which referred to "Payment on Account of damages" and "Payment on Account of Damages to Client" and showed two payments out of office account in the sum of £3000 each. Mr Purcell said that these payments had been made to the client by the Respondent or at his instigation, from the firm's office account.

31.10 Mr Purcell told the Tribunal that the Respondent had emailed the client on 20 March 2008 and his email stated:

> "Many thanks for the e-mail there has been some development today. The payment has been agreed and should be sent out in the next 7-14 days...".

31.11 Mr Purcell said that the reality was that the payments had been made by the Respondent from the firm's funds. By September 2009, the Respondent had gone on to tell the client that settlement discussions had taken place which Mr Purcell said was untrue. The client had been sent an email dated 16 November 2009 which stated:

> "Further to my e-mail of last week, I now have a revise (sic) offer for consideration...".

and on 9 February 2009, a further email to the client stated:

> "By way of an update a further interim payment is on its way to us and I should be in a position to let you have the funds by the end of the week".

31.12 Mr Purcell said that nothing indicated that this had ever happened namely that the Respondent had received such an offer or that interim payments had been received on the client's behalf. The Respondent had also written to the therapist, Mr TN on 19 December 2009 and stated:

> "... I confirm that I am chasing payment...".

31.13 Mr Purcell said that this had been misleading conduct on the part of the Respondent since it had been untrue and nothing indicated that the Respondent had chased for payment of Mr TN's fees, had there been anyone to chase.

31.14 In this case, Mr Purcell submitted that the Respondent had failed to progress the client's claim within the limitation period, incorrectly advised the client on the limitation period, misled the client as to progress, source of funding and source of interim payments, made a payment to the client of "damages" from the firm's office account and misled an expert as to the reason for delays in payment.

31.15 Mr Purcell submitted that the Respondent had misled Ms CC over a lengthy period of five years, from March 2005 until February 2010. He said that it had been the complaint by Ms CC which had led to the firm investigating and discovering the Respondent's conduct.

Client: Mr IB

31.16 Mr Purcell said that the Respondent had been instructed by Mr IB in relation to his personal injury claim, which resulted from an alleged injury in 2000. A letter dated 31 October 2001 had been received from the proposed defendant's insurer which had repudiated liability. Mr Purcell said that there was no evidence it had been communicated to the client.

31.17 In June 2003 and close to the limitation period, Mr Purcell said that proceedings had been issued but the letter from the Respondent to the Court dated 17 June 2003 stated:

> "... We should be grateful if the sealed copy documents could be returned to us since we do not wish to serve papers at this time...".

31.18 Mr Purcell said that the Respondent had then written to the client on 3 October 2003 and had referred to a need to "serve further court papers" but no previous court papers had been served. A further email to the client dated 11 May 2005 had referred to "awaiting a hearing date". Mr Purcell said that an email had then been sent at the Respondent's instigation dated 15 January 2008 which communicated an "offer" of which no evidence had been apparent on the file and in respect of which no payment had been received.

31.19 Mr Purcell said that the client had telephoned on the same date and had expressed his dissatisfaction at the lack of progress of his matter and the "offer" had been communicated to the client the same day. Mr Purcell referred the Tribunal to the Witness Statement of Ms AG in which she had said that the email dated 15 January 2008 had been sent on the instruction of the Respondent.

31.20 In his note to the firm, Mr Purcell confirmed that the Respondent had admitted that

> "the client has been paid by me and I will need to reimburse".

31.21 In this case, Mr Purcell submitted that the Respondent had failed to serve proceedings, once issued, within the limitation period, caused the client to be misled as to progress of their case, made a payment to the client for "damages" which had come from the firm's office account and misled the client as to the source of funds paid out.

31.22 Mr Purcell referred the Tribunal to the case of client C (GC) and the client care letter dated 21 October 2002 which stated:

> "So far as the question of legal costs are concerned, in a successful (sic)it will be recovered from the paying party and will be paid separately from the damages which your son will receive in full. In an unsuccessful claim the matter will cost you nothing which is known as a "No Win No Fee" arrangement".

31.23 Mr Purcell said that there had been no written CFA on the client's file and no information in a letter or on the file itself in relation to any insurance for the client's potential cost liability. Mr Purcell submitted that there had been a failure by the Respondent to advise the client as to their potential cost liability.

31.24 In relation to the dishonesty allegation, Mr Purcell said that this had not been put on the basis that the Respondent had stolen client money or had benefited financially in some way but rather, that he had misled clients. Mr Purcell acknowledged that the dishonesty allegation was narrow but submitted that it was straightforward and serious; the Respondent had knowingly and deliberately lied to clients and his conduct would have been regarded as dishonest by any reasonable person and he must have known it was dishonest.

31.25 Mr Purcell acknowledged that the Respondent had made efforts to establish the true position on files following the firm's investigations and he had sought to take responsibility for his actions however the Applicant also viewed the firm as a victim of the Respondent's conduct; monies had been paid out of office account and the firm had been exposed to claims by clients which had necessarily impacted upon the firm's professional indemnity insurance.

<u>Submissions on behalf of the Respondent</u>

31.26 Mr Fox referred the Tribunal to the documents upon which he sought to rely, namely the Report of Dr Schauder, the testimonials and the Respondent's Schedule of Income and Outgoings.

31.27 Mr Fox confirmed that the Respondent remained on the Roll of Solicitors but said that he had not sought to renew his practising certificate. He said that if the Respondent was able to do so in future he anticipated that conditions might then be imposed with regard to the Respondent's future ability to practice.

31.28 In relation to the Respondent's current employment, Mr Fox said that he was employed as a Cost Draftsman and that he had no connection with his former firm.

31.29 Mr Fox said that the Respondent had handed money to clients, some of whom had not had a good case or had been unable to pursue their case due to the Respondent having missed the limitation period. In the normal scheme of events, Mr Fox said that the firm would have reported the cases to their insurer and they would have settled any claims. The Respondent had no previous complaints history and yet he found himself before the Tribunal facing allegations which included dishonesty.

31.30 Mr Fox said that the Respondent had thought long and hard regarding the dishonesty allegation and whether he had been dishonest or whether he had had the mental capacity at the relevant times to have been dishonest and Mr Fox referred the Tribunal to the Report of Dr Schauder. Mr Fox said that ultimately, the Respondent accepted that in the fair way in which it had been pleaded, he had been dishonest since he had misled clients.

31.31 Mr Fox submitted that this had happened due to the stress and pressure the Respondent had been under at the relevant times and he said that it was sad that there had been no robust systems in place for supervision including file reviews and that no notice appeared to have been taken of the Respondent's situation.

31.32 Mr Fox submitted that it was to the Respondent's credit that when these matters had come to light, he had gone through all of the files and had done all that he could to atone for his actions and he had sought to minimise the damage he had caused. Mr Fox said that the Respondent had had £130,000 of capital in the firm which he had voluntarily signed over to the remaining partners to make good the losses; losses which the Respondent thought he had been paying out of his own money. Mr Fox said that the Respondent had also had an interest in the goodwill, work in progress and CFAs of the firm and he had relinquished any interest in those. Mr Fox submitted that the Respondent had sought to put right any loss to the firm and he had apologised to those clients who had been affected by his conduct. He said there was now a formal agreement in place for repayment by the Respondent of the £10,000 which had remained outstanding.

31.33 Mr Fox told the Tribunal that the Respondent felt that he had let everyone down but this had been a clear example of someone overcome by stress, which had been reflected in the Report of Dr Schauder. In response to a question from the Tribunal, Mr Fox confirmed that Dr Schauder had not seen the Rule 5 Statement but had received a summary of it. Mr Fox said that the Respondent had begun taking stress medication approximately one year prior to seeing Dr Schauder.

31.34 The Tribunal noted that in the section of the Report headed "Medical History" it stated:

> "... he has presented to his GP on a number of occasions over the period in question with the following; chest pains and his (sic) been subjected to ECG's (sic).; sleep disturbance; and Shingles. It is apparent that the symptoms he has presented with are all stress related".

31.35. Mr Fox acknowledged that the Respondent's medical history had been provided to Dr Schauder by the Respondent himself and Mr Fox also acknowledged that in the "Psychometric Questionnaires", the "Beck Depression Inventory (BDI)" stated:

> "He scored 21 on this scale, which reflects a moderate level of depression".

31.36 Mr Fox referred the Tribunal to the testimonials which had been produced on behalf of the Respondent and asked that they be taken into consideration when the Tribunal had regard to such sanction as it thought fit. Mr Fox informed the Tribunal that Mr SB who had provided a testimonial for the Respondent had attended with him and was willing to answer any questions which the Tribunal might have.

31.37 Mr Fox asked the Tribunal to take into consideration the Respondent's conduct since these matters had come to light, his contrition and the financial losses he had willingly borne when the Tribunal had regard to sanction.

31.38 Mr Purcell said that he had additional comments with regard to the Report of Dr Schauder. He said that firstly there had evidently been documents which Dr Schauder had seen or relied upon which were not before the Tribunal and had not been disclosed. Secondly, Mr Purcell said that there was reference in the Report to the Respondent having acted "quite inappropriately" but there was no reference to the Respondent having made misleading statements to his clients or to his having acted dishonestly.

31.39 Mr Purcell said that the Report of Dr Schauder appeared to have been based upon poor case management by the Respondent rather than the specific and serious allegations as set out in the Rule 5 Statement and he submitted that this had to affect the degree of weight which the Report could be afforded.

31.40 Mr Fox submitted that the Report explained why someone who had never previously conducted himself in this way had done so. Mr Fox said that the Respondent had been unable to afford Dr Schauder's fees to attend the Tribunal and he could not therefore assist any further.

31.41 In response to a question from the Tribunal, Mr Purcell said that it was not possible to assess what level of loss, if any, there had been to clients. He said that similarly, it was not possible to estimate the loss to the firm as some of that loss was intangible such as the goodwill and reputation of the firm.

**The Tribunal's Findings**

32. The Tribunal applied its usual standard of proof beyond reasonable doubt.

33. The Tribunal found all of the allegations against the Respondent, including the allegation of dishonesty, proved on the facts and on the documents. The Tribunal noted that the Respondent had admitted all of the allegations.

**Previous Disciplinary Matters**

34. None

**Mitigation**

35. Mr Fox relied upon his submissions in mitigation.

**Sanction**

36. The Tribunal had found all eight of the allegations proved, including the allegation of dishonesty.

37. The Tribunal had listened very carefully to the submissions on behalf of the Applicant and the Respondent and had read all of the documents to which it had been referred, including the Report of Dr Schauder and the testimonials on behalf of the Respondent.

38. The Tribunal considered this to have been a sad case. It noted that the Respondent had admitted all of the allegations and that in relation to the dishonesty allegation, he had thought long and hard about that and whether he had had the necessary mental capacity. The Tribunal had heard that the Respondent accepted that he had been dishonest and that he had misled clients.

39. The Tribunal considered the breaches by the Respondent to have been very serious and it was concerned that the allegations against the Respondent included breaches of the core duties which under the Solicitors' Practice Rules 1990 and the Solicitors' Code of Conduct 2007 underpinned the profession's regulatory obligations and responsibilities. The Tribunal was mindful that it had to protect the public interest, the profession's reputation and impose a sanction which was both reasonable and proportionate.

40. The Tribunal considered the range of sanctions available to it and whether a fine or period of suspension was appropriate. In all the circumstances however the Tribunal concluded that it had no alternative but to strike off the Respondent having regard to his dishonesty and his misconduct in a number of client matters over a lengthy period of time.

**Costs**

41. Mr Purcell asked the Tribunal to make an order for costs as set out in the Applicant's Statement of Costs in the sum of £30,689.16. Whilst he acknowledged that there had been no Forensic Investigation in this case, Mr Purcell said that a substantial exercise had been undertaken in reviewing the clients' files and the material involved. He said that the files had been in disarray and it had been very difficult to identify what had been and had not been recorded on the files. In relation to his charging rates, Mr Purcell said that these had reduced over time in accordance with his firm's agreement with the Applicant.

42. Mr Purcell said that where at all possible, he had allocated the work on the case to the most appropriate fee earner and he had undertaken work in the most cost-effective

way. In response to a question from the Tribunal, Mr Purcell said that he was unable to produce documentation to show the number of hours spent drafting the Rule 5 Statement as he did not have the records with him. He said that the Rule 5 Statement and that of Mr G had taken considerable time to draft and the time claimed for included time spent analysing and collating the material required for the exhibits.

43. Mr Purcell submitted that the costs requested on behalf of the Applicant were reasonable and proportionate and he asked the Tribunal not to make an order for costs "not to be enforced without leave" as such an order was difficult for the Applicant to bring back before the Tribunal. Mr Purcell confirmed that he had no objection to the Tribunal assessing the costs as opposed to detailed assessment.

44. Mr Fox said that the Respondent had already given up his interest in the firm, had sought to make good the financial losses suffered by the firm and he had very little money left. Mr Fox referred the Tribunal to the Respondent's Schedule of Income and Outgoings.

45. In relation to the Applicant's costs, Mr Fox said that there was no dispute regarding the number of hours or rates charged but he was concerned that a higher level fee earner appeared to have undertaken some work, which he considered unnecessary and there may have been some duplication of work. Mr Purcell sought to reassure Mr Fox and the Tribunal that no work had been duplicated. Mr Fox confirmed that he also had no objection to summary assessment of the costs by the Tribunal.

46. Mr Fox said that by the Respondent having gone through the clients' files, he had reduced the amount of time needed to examine the files.

47. Mr Fox submitted that the Respondent was not in a good position financially and would not be able to discharge a financial penalty. In response to a question from the Tribunal, Mr Fox confirmed that the Respondent owned his property jointly with his wife and that his share of the equity was £50,000. Mr Fox submitted that the Respondent would be unable to raise any finance against his share in the current economic climate.

48. The Tribunal noted that both the Applicant and the Respondent were content for the Tribunal to summarily assess the costs rather than for costs to be dealt with by way of detailed assessment.

49. The Tribunal considered that the time and costs claimed by the Applicant for dealing with the Rule 5 Statement and the Witness Statement of Mr G appeared to be very much on the high side and Mr Purcell had been unable to produce details of the precise number of hours spent. The Tribunal summarily assessed the costs and ordered that the Respondent pay costs in the sum of £20,000.

50. The Tribunal had taken into consideration the Respondent's financial circumstances which included that he had some capital and an equity share in the matrimonial home of £50,000. In those circumstances, the Tribunal ordered that the costs order should take immediate effect. The Tribunal had also had regard to the case of Merrick v The Law Society [2007] EWHC 2997 (Admin) in reaching its decision on costs.

**Statement of Full Order**

51. The Tribunal Ordered that the Respondent, Mark Kenneth George Bennett, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £20,000.00.

Dated this 23rd day of April 2012
On behalf of the Tribunal

A. N. Spooner
Chairman